

Remarks

Claims 1-27 are currently pending in the patent application. Applicant notes that the rejections presented in the instant Office Action have been repeated from the previous Office Action and that the Response to Arguments overlooked certain evidentiary matters that were entered to overcome these rejections. For the reasons set forth below, Applicant respectfully maintains the traversal of the rejections and submits that the claimed invention is allowable over the cited references.

The Office Action dated May 24, 2006, indicated that claims 1-27 are rejected under 35 U.S.C. § 103(a) over Muller *et al.* (U.S. Patent No. 6,606,301) in view of Bellaton *et al.* (U.S. Patent No. 6,473,425).

Applicant respectfully traverses the Section 103(a) rejection of claims 1-27. The Examiner fails to present a combination of references that corresponds to the claimed invention for the reasons stated below, including those stated in the previous response which Applicant hereby incorporates by reference. In the instant Office Action the Examiner merely repeats the rejections from the previous Office Action and then restates the rejections in the Response to Arguments section beginning on page 11. The rejections in the instant Office Action rely on the Examiner's misinterpretation of at least the Bellaton '425 reference and, as such, the references as combined do not correspond to the claimed invention.

The Examiner acknowledges in the pertinent part of the Office Action that: "Muller fails to disclose detecting a matching flow identification between a recently-received incoming packet with at least one packet selected from a set of outgoing packets in order to determine which packet to be dropped." (See, pages 2-3). The Examiner attempts to overcome this deficiency by citing portions of the Bellaton '425 reference relating to a processor (28) of Figure 2 and the flow chart of Figure 11. However, none of the cited portions of the Bellaton '425 reference relate to the aspects of the claimed invention which the Examiner acknowledges are not disclosed by the Muller '301 reference. Specifically, detecting a matching flow identification between a recently-received incoming packet with at least one outgoing packet. The discussion relating to Figure 11 of the Bellaton '425 reference states that in step 130 the queue controller waits for a new packet to be available

for transmission; the flow and ID information of this new packet are then compared to those of other stored packet which are also waiting to be transmitted (see, *e.g.*, col. 9, lines 23-40). The purpose of the Bellaton '425 reference is to avoid unnecessary retransmission of duplicate packets where a delay in receipt of an acknowledgement results from delays in being able to transmit the packet from the queue (see, *e.g.*, col. 10, lines 33-37). As such, the Bellaton '425 reference does not match flow identification of a recently received incoming packet, because there has as yet been no transmission and thus no recently-received incoming packet as in the claimed invention. Applicant accordingly requests that the Section 103(a) rejections be withdrawn.

Applicant further submits that there is no motivation or suggestion in the prior art to combine these references. According to the Examiner, "The motivation would have been to provide a fair share of the bandwidth between the flows, sessions, connections and prevent congestion." However, "the flows" to which the Examiner refers have no antecedent basis in connection with the asserted aspects of these references. As discussed above, the Office Action is based on the Examiner's misinterpretation of at least the Bellaton '425 reference – which does not discuss any correlation between recently-received incoming packets and the outgoing packets to be transmitted and/or retransmitted per Figure 11 and related discussion of the Bellaton '425 reference (see, *e.g.*, col. 9, line 22 to col.10, line 37). Therefore, such fair share of the bandwidth between "the flows" is not apparent from either reference, and one skilled in the art would not be led by the prior art (or "motivated" under §103(a)) to implement the asserted combination.

Applicant further traverses all of the Section 103(a) rejections based, *inter alia*, on the reasons previously presented. The Examiner repeats the rejections from the previous Office Action and fails to adequately address Applicant's prior arguments. The M.P.E.P. dictates that the Office Action should take note of the applicant's arguments and answer the substance of them. *See* M.P.E.P. § 707.07(f). This is consistent with the purpose of aiding the applicant in judging the propriety of continuing the prosecution, as indicated in 37 C.F.R. § 1.104(a)(2) and 35 U.S.C. § 132. M.P.E.P. § 707.07(f) further urges that the Examiner state the reasons for his or her position (regarding Applicant's arguments) in

the record. The Examiner's repetition of the rejections without responding to certain of Applicant's arguments is improper; for example, that the asserted combination of references would undermine the operation and/or purpose of the main reference (Muller '301). See M.P.E.P. § 2143.01, *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Because the Office Action fails to comply with this requirement of the M.P.E.P., Applicant requests that the Section 103(a) rejections be withdrawn.

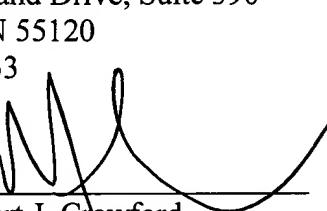
More specifically, regarding undermining the operation and/or purpose of the Muller '301 reference, the operation and purpose of the Muller '301 reference is to provide "early random discard of packets" when the rate of packet transfers cannot keep up with the rate of packet arrivals at the queue. See Title, Abstract and Summary of the Muller '301 reference. According to the asserted modification of the Muller '301 reference, some aspect of incoming packets would be assessed in order to determine which packet to be dropped. Based on the Office Action's one-sentence discussion of this hypothetical embodiment, assuming *arguendo* that such an embodiment would be operable, it would appear that this hypothetical embodiment would be dropping packets not randomly as intended by the Muller '301 reference but rather based on some undefined aspect of incoming packets. Applicant submits that this the Muller '301 reference teaches away from any such modification and that the rejection is improper and should be withdrawn under M.P.E.P. § 2143.01.

In view of the above discussion, Applicant believes that the rejection has been overcome and the application is in condition for allowance. A favorable response is requested. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is encouraged to contact the undersigned at (651) 686-6633.

Respectfully submitted,

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